



393597



Illinois Environmental Protection Agency • P. O. Box 19276, Springfield, IL 62794-9276

217/732-6760

July 5, 1989

Louis M. Rundio, Jr.
McDermott, Will and Emery
111 West Monroe
Chicago, Illinois 60603

L2010300031-Winnebag
Rexnord, Rockford Products #3
ILD005212097
HRS / Superfund

Dear Mr. Rundio:

I am in receipt of your June 23, 1989 letter in which you expressed some concerns over the nature of the screening site inspection which will be conducted at Rockford Products Plant #3.

My review of this correspondence has identified four specific areas of concern:

1. The State of Illinois' authority to conduct this CERCLA pre-remedial action.
2. Lack of specifics concerning the scope of activities to be undertaken during the inspection.
3. The Agency's reasonable basis to believe there may be a release or threat of release.
4. The gathering and handling of proprietary information.

Towards these concerns I offer the following reply:

1. The Illinois Environmental Protection Agency is currently under contract with the United States Environmental Protection Agency to undertake CERCLA Pre-remedial investigations (both preliminary assessments and screening site inspections) at certain State facilities.

Rockford Plant #3 (ILD 005212097) has been identified in the November 21, 1988 amendments to Federal/State Cooperative Agreement Number 87-09-25-01 as a fiscal year 1989 Illinois screening site inspection work project (see page 9 of Federal/State Cooperative Agreement).

2. To eliminate unnecessary sampling and aid in the development of a formal work plan, the project manager (Mr. John Morgan) has attempted to gain entry to the site for the purpose of conducting a visual inspection and establishing exact sampling locations. To date officials of Rockford Products Plant #3 have refused site access.

Once Mr. Morgan has been given the opportunity to conduct his on-site reconnaissance, he would be happy to provide your clients with a copy of the formal work plan, which includes a detailed sampling plan, the sampling procedures which will be employed and a listing of the parameters for which all samples will be analyzed.



Page 2

3. As I indicated earlier, the State of Illinois was formally tasked by the USEPA to conduct a screening site inspection at Rockford Plant #3. The decision to schedule and conduct this CERCLA activity rests solely with the Region V offices of the USEPA.

Although we cannot be certain as to this federal agency's "reasonable basis of belief," the May 20, 1988 CERCLA Preliminary Assessment may offer some insight. This document cites two sampling events (a November 28, 1984 seepage pit and a December 10, 1985 monitoring well), and April 15, 1986 visual observation (in which a white liquid was observed entering the seepage pit), and a February 5, 1986 storage tank spill, as possible environmental concerns.

4. The purpose of the CERCLA screening site inspection is to gather information on hazardous wastes present at a site for the purposes of determining if a facility should receive further investigation. Detailed information concerning industrial processes, trade secrets, or proprietary information is not required and is therefore not solicited.

It is my sincerest hope that the above information adequately addresses your concerns, and that site access can be granted in the near future.

Should you have any questions concerning this correspondence, please feel free to contact me at the telephone number cited above.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Crause", written over a circular stamp.

Thomas Crause
Pre-Remedial Program Manager
State Site Management Unit
Remedial Project Management Section
Division of Land Pollution Control

TC/mls/2254k/61-62

L2010300031 - WINNEBAGO
REXNORD, Rockford Products #3
ILD005212097
HRS/SuperFund

RECEIVED

McDERMOTT, WILL & EMERY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

11 WEST MONROE STREET

JUL 12 1989

CHICAGO, ILLINOIS 60603-4067

Pre-Remedial
Unit

312/372-2000

FACSIMILE 312/984-7700

TELEX 253565, 210079

CABLE MILAM

75 STATE STREET
BOSTON, MASSACHUSETTS 02109
617/345-5000

3025 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
213/277-4100

700 BRICKELL AVENUE
MIAMI, FLORIDA 33131
305/358-3500

1301 DOVE STREET
NEWPORT BEACH, CALIFORNIA 92660
714/851-0633

445 PARK AVENUE
NEW YORK, NEW YORK 10022
212/371-7000

1850 K STREET, N.W.
WASHINGTON, D.C. 20006
202/887-8000

June 23, 1989

LOUIS M. RUNDIO, JR.
312/984-7710

Mr. Thomas Crause
Pre-Remedial Program Manager
Remedial Project Management Section
Division of Land Pollution Control
Illinois Environmental Protection Agency
Post Office Box 19276
Springfield, Illinois 62794-9276

RE: Rockford Products Plant No. 3
Your File No: L2010300031-Winnebago

Dear Mr. Crause:

On behalf of Rockford Products Corporation, we are responding to your June 6, 1989 request to inspect the Company's Plant No. 3 in Rockford, Illinois during the week of July 21, 1989. Rockford Products has several objections to the inspection and sampling activities proposed by the Illinois Environmental Protection Agency (IEPA).

First, your letter states that IEPA's proposed activities are authorized under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); however, the letter fails to state with any degree of specificity which provisions of CERCLA are being invoked by IEPA in seeking access to the plant. Furthermore, your letter does not disclose any fact which provides a basis for access under CERCLA Section 104 (42 U.S.C. § 9604), the apparent source of IEPA's claim of authority. In the absence of such a showing, IEPA lacks authority to enter the plant to conduct the proposed activities.

RECEIVED
JUL 12 1989

SUPERFUND PROGRAM
MANAGEMENT BRANCH

RECEIVED
JUN 27 1989
IEPA-DLPC

Mr. Thomas Crause
June 23, 1989
Page 2

Second, your letter does not explain the basis upon which IEPA, a state agency, invokes the authority of this federal statute. We note that CERCLA Section 104 permits the president to contract with a state to carry out some of the actions authorized by the statute. However, you have not provided Rockford Products with a copy of any such contract to which the State of Illinois or IEPA is a party, and your letter makes no reference to any such contract. Accordingly, we respectfully request that IEPA disclose the basis upon which it claims the authority to conduct the proposed activities.

Third, your letter fails to describe the proposed inspection and sampling activities in any detail. There is no work plan, no map, and no other description of the plant or the specific areas of the plant you propose to inspect or sample. The only identification is "Rexnord, Rockford Products No. 3" which is a broad and general reference to a large facility. This suggests that the request for access and the proposed inspection and sampling activities are an attempt to sample anywhere IEPA chooses and for any or no reason whatsoever. Unlimited access to the plant, as well as inspection and sampling of this scope, are clearly not authorized by CERCLA Section 104.

CERCLA Section 104 authorizes inspections only in limited circumstances. The general reference to the statute is inadequate to inform Rockford Products of the purpose and scope of the proposed inspection and sampling activities. Under Section 104(e)(1), entry upon property, inspection, and sampling, are authorized if and "only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant." 42 U.S.C. § 9604(e)(1). Rockford Products is not aware of any such release or threatened release at Plant No. 3, and you have not provided Rockford Products with any information in this regard that would justify entry under CERCLA Section 104.

We therefore request that you state whether or not IEPA claims to have a reasonable basis to believe that there may be a release or threat of a release of a hazardous substance, pollutant or contaminant at Plant No. 3, and, if so, to identify the facts constituting this basis for belief. If an inspection or sampling program is authorized under CERCLA, it must be reasonably tailored to investigate the particular facts of any such situation and must avoid any further invasion of the property of Rockford Products. Accordingly, we request that you describe the proposed inspection and sampling activities in detail, identifying the particular locations within Plant No. 3 you propose to inspect, the type of sampling procedures you propose to employ, and the parameters for the analysis of any samples to be taken.

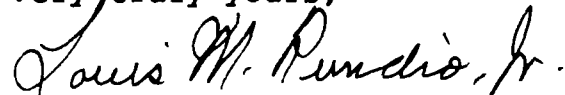
Mr. Thomas Crause
June 23, 1989
Page 3

Finally, Rockford Products is legitimately concerned for the confidentiality of its processes, trade secrets, and other proprietary information that may be revealed in the course of the inspection and sampling activities you propose to perform at Plant No. 3. Your letter fails to address this concern in any way. We think it is not appropriate for IEPA personnel or others to be allowed access to the plant until Rockford Products is reasonably assured of such confidentiality.

Notwithstanding the objections expressed above, please let me emphasize the willingness of Rockford Products to comply with lawful, reasonable requests from IEPA that are presented in a clear, concise manner along with detailed explanations of the location and type of sampling to be done, an indication of the parameters for analysis and a description of the facts giving rise to IEPA's authority to enter the premises. In the absence of this information, Rockford Products will not grant IEPA access to Plant No. 3 during the week of July 21, 1989.

I trust you will contact me with the required information in the near future.

Very truly yours,

A handwritten signature in cursive script that reads "Louis M. Rundio, Jr.".

Louis M. Rundio, Jr.

LMR/anl
0273h